

H

INITIAL SCREENING OF INCOMING PAPERS CHECKLIST

Reviewer:

K Chase Date: 5-24-08

APPLICATION NO.

09/135486

1. PETITION TYPE CODE

R137(a) Petition-----501
 R137(a) Petition -----509
 (Issue Fee/Dwgs)
 R137(b) Petition-----502
 R137(b) Petition-----510
 (Issue Fee/Dwgs)
 R137(f) Petition-----536
 R182 Petition-----519
 R183 Petition-----503
 R378(b) Petition-----532
 R378(c) Petition-----533
 R377 Petition-----521
 R3.81(b) Petition-----523
 R181 Petition-----515
 R181 Petition-----504

PETITION TYPE CODE

R28c Petition-----309
 R47 Petition-----313
 R53(e) Petition-----408
 R53 (R62 filing date)----410
 R10 Petition-----411
 Lost Application-----412
 R78(a)(3) Petition-----535
 R78(a)(6) Petition-----535
 R55(c) Petition-----535
 R314 Petition-----508
 R55(a) Petition-----507
 Pet. W/D Abn-----525
 R705(b)/c-PTA-Bef iss---550
 R705(d) PTA-Aft iss-----551
 Other _____

2. LIST PAPERS FILED WITH PETITIONS

<input type="checkbox"/> PreAmdt/Amdt	<input type="checkbox"/> CPA	<input type="checkbox"/> Associate POA
<input type="checkbox"/> Filing Fees	<input type="checkbox"/> RCE	<input type="checkbox"/> Terminal Disclaimer
<input type="checkbox"/> Reply/Arguments	<input type="checkbox"/> IDS	<input type="checkbox"/> Change of Address
<input type="checkbox"/> " Election	<input type="checkbox"/> 129(a) Submsn	<input type="checkbox"/> Revocation/Poa
<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Issue Fee	<input type="checkbox"/> Priority Documents
<input type="checkbox"/> Brief (3)	<input type="checkbox"/> Drawings	<input type="checkbox"/> Oath/Decl. & POA
<input type="checkbox"/> Reply Brief	<input type="checkbox"/> Oath/Decl & POA	<input type="checkbox"/> Rule 312 Amdt
<input type="checkbox"/> Declaration R132	<input type="checkbox"/> Ext Time (____)	

Other Papers _____

3. Is paper a petition to withdraw holding of abandonment: yes no
If so, send paper and/or file to appropriate location (*Note: remove any flag set first*):

- a. Nonreceipt of action from TC or assertion that reply was timely filed:
Send paper to TC _____
- b. Nonreceipt of Missing Parts Notice or assertion that reply was timely filed:
Send paper to DIRECTOR -OIPE - -CP2-7D25 (PH: 308-0910)
- c. Assertion of timely payment of issue fee and/or submission of drawings:
Send petition to Office of Publications: ATTN: Tom Hawkins
- d. Other _____

4. Other: PCT Regal

If not handled in Office of Petitions, send paper to appropriate location.

5. Is petition accompanied by assignment papers, fee address, or other paper which needs to be sent to another location? yes no If so, make copy of assignment papers, fee address, or other paper; mail original to proper location and place copy in file with an indication that the original paper(s) has been forwarded to the appropriate location (Assignment Branch; Maintenance Fee Division, etc.)



DAC
#4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Dionisio Rio Simoes)
Appln. No. : 09/135,486)
Filed: August 18, 1998)
For: INSTRUMENT FOR THE MEDICAL)
OR DENTAL TREATMENT OF)
CHILDREN)

RECEIVED

MAY 24 2002

OFFICE OF PETITIONS

RENEWED PETITION UNDER 37 CFR 1.137 (b)

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This renewed petition is being filed in conjunction with a Request for Reconsideration.

Respectfully submitted,


Felix J. D'Ambrosio
Reg. No. 25,721

May 22, 2002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Dionisio Rio Simoes)
Appln. No. : 09/135,486)
Filed: August 18, 1998)
For: INSTRUMENT FOR THE MEDICAL)
OR DENTAL TREATMENT OF)
CHILDREN)

REQUEST FOR RECONSIDERATION

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

It is respectfully requested that the decision to dismiss the petition under 37 CFR 1.137(b) on the grounds that the delay in filing the national phase application 09/135,486 resulted "from a deliberate course of action on the part of the applicant" be reconsidered in view of the following.

(1)

According to Webster's Third New International Dictionary "deliberate" means:

- 1: characterized by or resulting from unhurried, careful, thorough, and cool calculation and consideration of effects and consequences: not hasty, rash, or thoughtless.....
- 2: characterized by presumed or real awareness of the implications or consequences of one's actions or sayings or fully conscious often willful intent.....
- 3: slow, unhurried, and steady as though allowing time for decision on each individual action involved.....

it is also defined as meaning:

to ponder or think about with measured careful
consideration and often with formal discussion before
reaching a decision or conclusion.....

The term "deliberate" does not appear in 37 CFR 1.137(b), accordingly it is not defined there. If, therefore, the term "deliberate" is to be read into 37 CFR 1.137(b) then, it is respectfully submitted, it would have to carry its ordinary dictionary meaning. If that is done here then, it is respectfully submitted, the actions taken by the parties involved, both U.S. and German counsel do not rise to the level of "deliberate."

The undersigned has filed many U.S. national phase applications under 35 USC 371, and many applications under 35 USC 111. The undersigned has also filed national phase applications with a petition to revive under 35 USC 371. The 35 USC 111 route was chosen to aid applicant financially (only temporarily) since applicant is an individual. This route was chosen, however, not knowing that the German application had issued as a patent. If the undersigned had this knowledge, then this route would not have been chosen and a filing under 35 USC 371 would have been chosen regardless of the expense and the desire to temporarily aid applicant because it would have been the only real route available. German counsel did not know the U.S. law and therefore did not know to advise the undersigned about the patenting of the German application. If he had this knowledge he most certainly would have conveyed it to the undersigned.

Clearly, we do not have here a case of "deliberateness" on the part of either the undersigned or the German counsel as this term is generally understood by the definitions noted above. There was, at most, an unfortunate failure of communication, but this *cannot* rise to the level of "deliberateness."

(2)

The decision states that the "...letter dated 18 August 1998...indicates that applicant's representative deliberately did not file national stage papers in the United States under 35 USC 371 (i.e. deliberately chose not to seek revival of the international application) and instead chose to file a United States national application under 35 USC 111 in order to delay payment of filing fees." In the quoted passage the reference to "deliberately" should be changed to "cognitively." These concepts are not the same, and their difference matters. A cognitive act is one, again according to Webster's Third New International Dictionary, which is based on knowledge in the broadest sense, "an intellectual process by which knowledge is gained about perceptions or ideas." There is absolutely no basis in the actions of the undersigned or German counsel to conclude that the actions taken were anything other than cognitive, and certainly not "deliberate." The decision appears to be straining the meaning of terms in order to reach a desired result. Such an action is unbecoming of the petition process in the Patent and Trademark Office. 37 CFR 1.137 is remedial not punitive. The decision presumes a condition ("deliberateness") and then reads this condition into the Rule (37 CFR 1.137) which in fact does not appear in the Rule. No authority has been cited for such an interpretation of the Rule, and the undersigned is not aware of any

(3)

It appears as though the intent to "delay payment of filing fees" is considered by this decision as in some way being sinister. The Rules allow an applicant to delay the payment of filing fees. It should not be held against an applicant if they avail themselves of a procedure

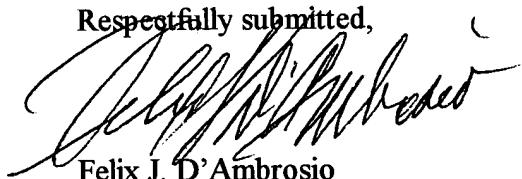
sanctioned by the Rules.

(4)

The facts show, it is respectfully submitted, that the undersigned and German counsel acted in good faith at all times. The facts as known and considered relevant at the time that the application was filed under 35 USC 111 coupled with the desire to aid an applicant financially by delaying payment of fees - not in avoidance of fees (all in accordance with the Rules - and only a temporary measure) should in no way be construed as an act of "deliberateness" negating the application of a remedy under 37 CFR 1.137.

In view of the above, reconsideration is respectfully requested and this petition granted.

Respectfully submitted,



Felix J. D'Ambrosio

Reg. No. 25,721

May 22, 2002